



Agenda Date: 3/6/02

Agenda Item: 4B

**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

**TELECOMMUNICATIONS**

IN THE MATTER OF THE PETITION FOR AN )  
ORDER AUTHORIZING LIGHTYEAR )  
COMMUNICATIONS INC. TO PROVIDE LOCAL )  
EXCHANGE TELECOMMUNICATIONS )  
SERVICES THROUGHOUT NEW JERSEY )

DOCKET NO. TE01050338

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated May 24, 2001, Lightyear Communications Inc. (Petitioner or Lightyear) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange services including exchange access throughout the State of New Jersey. In addition, Lightyear responded to a Staff questionnaire by letter dated November 14, 2001 and to Staff interrogatories by letter dated February 1, 2002. Petitioner requested confidential treatment of the financial information in Exhibit D of its petition.

According to the petition, Petitioner was incorporated under the laws of the State of Kentucky, as UniDial Incorporated on March 3, 1993. The company subsequently changed its name to UniDial Communications, Inc. and then to Lightyear Communications, Inc. Petitioner's principal offices are located at 1901 Eastpoint Parkway, Louisville, Kentucky 402232. Petition at 3.

Petitioner submitted copies of its Articles of organization, its Kentucky and New Jersey Certificates of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 2, Exhibits A and B. According to the petition, Lightyear was formed to provide local exchange services. Petition at 1. Petitioner advised that it is currently authorized to provide both resold and facilities-based local exchange service in the following states: Alabama, California, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Nevada, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Washington, D.C. and Wisconsin and resold local exchange service only in Connecticut, New Jersey, Vermont, Virginia and West Virginia. Lightyear is also currently authorized to provide resold interexchange services nationwide except Alaska and facilities-based interexchange service in Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Mexico, New York, Ohio, Oklahoma, Pennsylvania,

South Carolina, Tennessee, Texas, Vermont, and Washington State. Lightyear advised that it has not been denied authority to provide telecommunications services in any state; and that it has no pending civil, criminal or administrative actions against it. Lightyear advised that it is not currently negotiating an interconnection agreement.

Petitioner advised that it seeks authority to offer local exchange telecommunications services initially to business customers throughout New Jersey. Petitioner intends to provide service using unbundled network elements as well as its own facilities. Petition at 1, 4.

Petitioner requested waivers of N.J.A.C. 14:10-1.16 and 14:1-5.15, which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 7, 8. Petitioner also requested permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Louisville, Kentucky. Petition at 8. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records. Petition at 8, February 1, 2002 letter.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. Petition at 8.

With regard to its technical and managerial qualifications, Lightyear stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 7. Petitioner submitted the professional biographies of its key personnel who, according to Lightyear, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Petition at 7, Exhibit E.

Petitioner has submitted, as evidence of its financial qualifications, its balance sheet and income statement as of November 30, 2000, but will need to file two years pro forma income statements and balance sheets prior to approval of its tariff.

The Division of the Ratepayer Advocate, has not yet commented on this petition.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into the intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Lightyear's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma financial statements for its New Jersey operations. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided.

Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

Regarding the Petitioner's request for confidential treatment of the financial information submitted as Exhibit D of the petition, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that this financial information be kept under seal.

DATED: 3/06/02

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
JEANNE M. FOX  
PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

(signed)  
CAROL J. MURPHY  
COMMISSIONER

(signed)  
CONNIE O. HUGHES  
COMMISSIONER

ATTEST:

(signed)  
HENRY M. OGDEN  
ACTING BOARD SECRETARY